

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH S. DANIELS

Appeal No. 2001-1873
Application 08/261,863

ON BRIEF

Before PAK, OWENS and WALTZ, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the refusal to allow claims 40-45 which were added after final rejection. These are all of the claims remaining in the application.¹

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THE INVENTION

The appellant's claimed invention is directed toward a process for using potassium hydroxide to refine commercial scale quantities of crude agricultural oil. Claim 40 is illustrative:

40. In a process of refining crude agricultural oils in which neutralized oil is first separated from the soapstock by addition of a base, the improvement comprising the steps of:

a. beginning with a commercial scale quantity of crude agricultural oil,

b. mixing the oil with a base consisting essentially of potassium hydroxide solution, and

c. separating preliminarily refined oil from the resulting soapstock to produce commercial scale quantities of neutralized oil and soapstock.

THE REFERENCE

Red et al. (Red)	4,118,407	Oct. 3, 1978
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THE REJECTION

Claims 40-45 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Red.

OPINION

We reverse the aforementioned rejection. We need to address

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fatty acid from the crude soapstock by contacting the crude soapstock with an inorganic base (col. 1, line 63 - col. 2, line 7). The disclosed inorganic bases including potassium hydroxide (col. 3, lines 45-51).

The examiner's entire explanation of the rejection is the following (answer, pages 3-4): "Red et al. discloses a process in which a[n] oil-based soapstock is reacted with a caustic to produce a refined produce [sic, product]. Listed in col 3, line[s] 45-51 are applicable bases that can be used in which potassium hydroxide is one. The process includes numerous washing[s] as shown in the drawing."

The examiner has the initial burden of establishing a *prima facie* case of anticipation by pointing out where all of the claim limitations appear in a single reference. See *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138-39 (Fed. Cir. 1986).

The examiner has not pointed out where Red discloses mixing crude agricultural oil with potassium hydroxide. What Red

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Also, the examiner has not pointed out where Red discloses producing commercial quantities of neutralized oil and soapstock. The examiner argues that "[t]he size of the operation (i.e., bench vs commercial) is of no consequence, it is the product produced" (answer, page 5). This argument is not well taken because in order for a claimed invention to be anticipated under 35 U.S.C. § 102(b), all of the elements of the claim must be found in one reference. See *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). The appellant's sole independent claim requires "beginning with a commercial scale quantity of crude agricultural oil" and recites "to produce commercial scale quantities of neutralized oil and soapstock." The examiner has not pointed out where the commercial scale limitation is disclosed in Red.

For the above reasons we find that the examiner has not carried the burden of establishing a *prima facie* case of anticipation of the process recited in any of the appellant's claims. Accordingly we reverse the examiner's rejection.

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DECISION

The rejection of claims 40-45 under 35 U.S.C. § 102(b) over
Red is reversed.

REVERSED

CHUNG K. PAK)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
TERRY J. OWENS)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

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